IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P. No. 9532 of 2006

Date of decision:08.09.2006

Major Balraj Singh (Retd.) ..... Petitioner.

Versus

State of Punjab and others ..... Respondents.

CORAM: HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present:- Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. Ashok Aggarwal, Addl. A.G. Punjab
for respondent Nos. 1 to 3.

S.D. ANAND, J

1. Facts emerging from the pleadings of the parties and otherwise beyond the pale of controversy are as under:

2. The Punjab District Sainik Welfare Offices (State Service Class-I) Rules, 1986 (hereinafter referred to as the `1986 Rules') were notified by respondent no.1 vide notification dated 30.04.1986. As per the provisions of Rule 8(3)(a) thereof, "ex. Indian Commissioned Officer of the rank of Second Lieutenant, Lieutenant, Captain or Major or an officer of equivalent rank of the Indian Navy or the Indian Air Force" were eligible for the post of District Sainik Welfare Officer. That rule is extracted as under:

"8- Method of appointment and Qualifications:

(1)xx xx xx

(2)xx xx xx

(3) No person shall be appointed to the Service unless he:

(a) is an ex-Indian Commissioned Officer of the rank of the rank of Second Lieutenant, Lieutenant Captain or Major or an Officer of equivalent rank of the Indian Navy or the Indian Air Force;

(b) xx xx xx

(c) xx xx xx

3. Vide notification dated 07.05.2002, the nomenclature of those rules was amended to read as the Punjab District Sainik Welfare Offices (State Service Class-I) Rules, 2002 (hereinafter referred to as the `2002 Rules'). Apart therefrom, Rule 8(3)(a) quoted above was amended to provide that only Lieutenant Colonel or Colonel or equivalent rank of the Indian Navy or the Indian Air Force would be eligible for recruitment to the post of District Sainik Welfare Officer.

4. Vide an advertisement in the issue dated 6.6.2006 of 'The Tribune', the respondent No.3 invited applications from retired Army Officers for the posts of District Sainik Welfare Officers. The last date for submission of applications was 20.06.2006. The interview was fixed for 23.06.2006.

5. The petitioner, a former Major in the Indian Army, was inclined to apply for the aforesaid post and, for that purpose, he went over to the office of respondent no.2 on 20.06.2006 to file his application for the said purpose. The reception of that application was declined on the plea that he was ineligible to apply for that post and only retired Lieutenant Colonel or Colonel (or their equivalent ranks in Indian Navy or Indian Air Force) were eligible to apply for that post. The grievance of the petitioner is that the amendment brought about by the 2002 Rules, is contrary to the 1986 Rules

and it cannot be validly made applicable to the vacancies under reference which (vacancies) pertained to the pre-amendment period. The plea raised thereby is that the eligibility for the posts of District Sainik Welfare Officers has to be compulsively determined by the 1986 Rules which were prevalent during the period to which the vacancies relate.

6. The plea raised on behalf of respondent Nos. 1 to 3, in the form of short affidavit filed by the Deputy Director, Sainik Welfare, Punjab, is that the appointments to the posts aforesaid shall be governed by the 2002 Rules as these had come into operation by the time the vacancies were notified. The locus standi of the petitioner to file the petition was also challenged on averment that he did not at all apply for the post of District Sainik Welfare Officer in response to the advertisement dated 06.06.2006 and that he also did not appear in the walk-in interview held on 23.06.2006.

7. We have heard Mr. Gurcharan Dass, counsel for the petitioner, Mr. Ashok Aggarwal, Additional Advocate General, Punjab for the respondents No. 1 to 3.

8. In support of the plea that the eligibility in the present case has to be compulsorily determined by the pre-amendment Rules, the learned counsel for the petitioner placed implicit reliance upon **Latif Ahmed Thind v. State of Punjab 1994(3) S.C.T. 389 and Y.V. Rangaiah and others v. J. Sreenivasa Rao and others, AIR 1983 SC 852**.

9. The reliance placed by the learned counsel for the petitioner on Latif Ahmed Thind's case (supra) is misconceived. Though it was indeed held by this Court in that Division Bench ruling that the amendment in Service Rules shall have a prospective effect and cannot apply to the vacancies which occurred before amendment, it cannot be lost sight of that

the matter in issue in that case pertained to promotion. It was not a case of direct recruitment. A similar matter came up before another Division Bench of this Court in **Sandeep Singh and another v. State of Haryana etc. in CWP No. 7474 of 2003.** In that case as well, this Court held that the provisions of the aforesaid rule would apply only to the promotion posts and not to the posts to be filled up by direct recruitment. After noticing the ruling rendered by the Hon'ble Apex Court in Y.V. Rangaiah's case (supra) , this court held that :

> "It is obvious that the vacancies in question, in so far as the present controversy is concerned, were required to be filled up by direct recruitment. For the aforesaid reason itself, the decision rendered by the Apex Court in Y.V. Rangaiah's case (supra) would be inapplicable to the present controversy.
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> Post meant to be filled up by direct recruitment must be filled up in terms of the prevalent rules at the time of filling up of the posts unless there is a fore-bidding statutory provision."

10. The position that, therefore, emerges is as under:-

If the vacancies to be filled up pertain to the promotion quota, the competent authority would be mandated to fill those up on the basis of the rules prevalent at the time those vacancies arose. However, if those vacancies are to be filled up by direct recruitment, the rules prevalent on the date of recruitment would govern the issue. As apparent from the record, there is no "forbidding statutory provision" in terms of the ruling in Sandeep Singh's case (supra).

11. In the present case, the vacancies were to be filled up by direct recruitment. The advertisement for the purpose appeared in the issue dated 6.6.2006 of `The Tribune'. Though the notification regarding 2002 Rules appeared on 9.6.2006 (i.e. three days after the issue of advertisement), it

(advertisement) was in accord with the amendment on point of eligibility. By the very nature of things, the rules had already crystalised much earlier. However, the process of formal notification was to take some time. The mere fact, thus, that the rules came to be formally notified three days after the issue of the advertisement, would not affect their validity vis-a-vis the impugned advertisement.

12. It is established law that a candidate, on the mere making of an application, does not acquire a vested right for selection. He can only claim entitlement to be considered for selection. A candidate has a right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystalises on the date of publication of the advertisement. The present is not a case where the advertisement was issued on the basis of the unamended rules. In fact, the advertisement was issued in accord with the amended rules which rendered the petitioner ineligible to apply for the post under reference. The last date for receipt of application was 20.6.2006. The only inference deducible in the circumstances of the case is that it is the amended rules which were to govern the impugned appointment process. As the petitioner was not eligible to apply for the post of District Sainik Welfare Officer in terms of advertisement dated 6.6.2006, he cannot legitimately have a grievance in the relevant behalf.

13. We, accordingly, dismiss this writ petition.

(S.D. ANAND)
JUDGE

08.09.2006
dinesh/vkd

(J.S. KHEHAR)
JUDGE